

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL
RECEIVED

DEC 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
to Establish Part 27, the Wireless)
Communications Service ("WCS"))

WT Docket No. 96-228

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.
TO THE NOTICE OF PROPOSED RULE MAKING

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:



Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W. - 12th Floor
Washington, D.C. 20036
(202) 857-3500

No. of Copies rec'd
List ABCDE

0211

December 16, 1996

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.¹ Consistent with a number of commenters, AMTA is concerned that the tenor and timetable of the Congressional directive to which the instant reallocation proposal is a response effectively have usurped the Commission's statutory obligation to ensure that its decision promote the public interest, as well as sound, responsible spectrum management policies. To the extent this proceeding represents a model for the future, rather than a regrettable aberration dictated by the exigencies of particular budget considerations, the Association must express its deepest reservations about the future of telecommunications policy making. AMTA recognizes that the deficit-driven mandate from Congress leaves the FCC with little latitude in crafting its rules for this band, since the outcome, at least from an economic perspective, is pre-ordained. Nonetheless, to the extent possible, AMTA urges the Commission to re-evaluate its proposal in respect to the interests of small businesses and the need to preserve regulatory parity among competitive services.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many of them have

¹ 47 C.F.R. § 1.415; Notice of Proposed Rule Making, GN Docket No. 96-228, FCC 96-441, 11 FCC Rcd. ___, (rel. Nov. 12, 1996) ("Notice" or "NPR").

been reclassified as Commercial Mobile Radio Service ("CMRS") providers,² and are considered by the Commission as competitive participants in the broadly defined CMRS marketplace.³ Most would be classified as "small business" under any definition of that term. Thus, to the extent that the Commission's proposal for this band would permit the establishment of additional CMRS systems without a meaningful opportunity for small business participation and with an exemption from the CMRS spectrum cap⁴, AMTA and its members have a distinct interest in the outcome of the proceeding.

II. BACKGROUND

2. This proceeding was dictated by a provision in the Appropriations Act that requires the FCC to reallocate frequencies in the 2305-2320 and 2345-2360 MHz bands to wireless services in conformance with international agreements, and to award licenses through a competitive bidding process.⁵ Further, the Act specifies that auctions in this band must commence no later than April 15, 1997, and that the bidding proceeds be deposited by September 30, 1997. To ensure that the FCC is able to comply with these statutory deadlines, the Act also suspended a number of procedural requirements, including those relating to the timing of the effectiveness of Public Notice of the NPR, the agency's obligation to provide a

² See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

³ Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) ("CMRS Second R&O").

⁴ 47 C.F.R. § 20.6(a).

⁵ See Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996) ("Act").

regulatory flexibility analysis and to comply with information collection requirements, as well as the heretofore core, Section 309 provisions regarding public notice of acceptance of applications for filing and petitions to deny.⁶

3. In light of this Congressional juggernaut, it hardly is surprising that the Notice proposes a regulatory approach seemingly intended to attract the largest number of dollars from the deepest pocket participants in the shortest possible timetable. The Commission proposes to establish a new Wireless Communications Service ("WCS") in the 2305-2320 and 2345-2360 MHz bands with essentially no restrictions on how or by whom the spectrum could be used, with the provisos that whatever services are offered must comply with internationally-agreed upon use of the spectrum and may not cause interference to other radio services. Specifically, the Notice recommends that these frequencies be available for all fixed, mobile, radiolocation or broadcasting-satellite services, or any mix thereof, on a licensee-by-licensee basis.⁷ To the extent the service offered is mobile, and perhaps even fixed, it presumptively would be classified as CMRS.

III. DISCUSSION

A. **The WCS Proposal Does Not Offer a Meaningful Opportunity for Small Business Participation.**

4. Congress has established what essentially are mutually exclusive goals for this band: it has explicitly directed the FCC to ensure small business participation in the provision

⁶ Notice at ¶ 3.

⁷ Notice at ¶ 9.

of service,⁸ while at least implicitly suggesting the need to derive the maximum revenue from this spectrum auction. The Commission has responded to these inconsistent mandates by proposing to permit the partitioning, disaggregation and even franchising of WCS spectrum acquired at auction.⁹ The NPR suggests that these opportunities will enable small businesses that lack sufficient resources to participate in the auction process to acquire sub-allocations consistent with their service requirements.¹⁰

5. AMTA supports the Commission's proposal to authorize partitioning, disaggregation and franchising in the WCS as it has in other auctioned services.¹¹ These provisions may create opportunities that otherwise would be denied to entities economically incapable of succeeding in a WCS auction, although their practical availability and utility have not yet been tested in a real world environment.

6. However, even if these options create some secondary market for small business participation, the Association does not consider them responsive to the FCC's statutory obligation. A provision that permits, but does not require, individual licensees to sell to third parties, including small businesses, whatever portion of the frequency allocation or geographic area the auction winner deems undesirable is hardly comparable to crafting rules that promote small business involvement in the initial license acquisition process. While partitioning,

⁸ Section 309(j)(3)(B) of the Act.

⁹ Notice at ¶ 16.

¹⁰ Id.

¹¹ "Public Comment Invited, American Mobile Telecommunications, Inc. files Petition for Rulemaking to Expand Geographic Partitioning and Spectrum Disaggregation Provisions for 900 MHz SMR (RM-8887)", Public Notice, DA 96-1654 (rel. Oct. 4, 1996).

disaggregation and franchising may prove useful, additional, small business entry vehicles into this band, their availability depends on the business appetites of the larger auction winners. In that respect, they will never be a substitute for meaningful government actions including, but not limited to, the creation of entrepreneurs blocks, and the adoption of bidding credits and installment payments, all of which have a documented ability to promote small business participation.

B. The Provision of CMRS on WCS Spectrum Must be Subject to the CMRS Spectrum Cap.

7. The Notice seeks comment on whether WCS spectrum should be counted against the CMRS spectrum cap if that spectrum is used to provide CMRS.¹² The Commission recognizes that applying the cap may exclude firms with the most experience and the highest probability of developing innovative technologies for the band. On the other hand, the FCC also notes that applying the cap may help preserve a competitive CMRS marketplace by preventing dominance by one or a few large companies.

8. The Commission previously has determined that a CMRS spectrum cap is needed to ensure robust competition among so-called broadband providers in this wireless marketplace. While other approaches might have been adopted, and may be appropriate prospectively, the spectrum cap is the FCC's current regulatory tool of choice.

9. In light of the FCC's extensive record on this point, the query in the Notice is, at best, surprising. At worst, it would appear to reflect a Commission perception, perhaps an accurate one, that the key Congressional objective in directing that this spectrum be auctioned

¹² Notice at ¶ 25.

was an effort to fill the Federal coffers with the maximum possible bidding revenue. The highest bids, of course, are likely to come from entities with the deepest pockets, or those with the most at risk from a competitive CMRS service. To a large extent, the same parties fall within both categories and typically are entities with significant cellular and/or PCS holdings -- the very parties that might be excluded from a WCS auction because of the CMRS spectrum cap.

10. AMTA submits that, to the extent the FCC retains a CMRS spectrum cap, it must be applied to all broadband CMRS offerings, whether they are provided on cellular, PCS, SMR or WCS spectrum. There is no credible policy basis for excluding WCS from that limitation when the frequencies are used to support a CMRS service, unless maximum auction revenue is the guiding, indeed the exclusive, policy consideration in the analysis.

IV. CONCLUSION

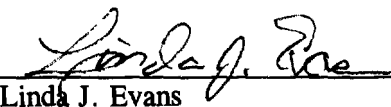
11. For the reasons described above, AMTA recommends that the Commission adopt rules for the WCS band consistent with the recommendations herein.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 16th day of December, 1996, caused to be mailed a copy of the foregoing

Reply Comments to the following:

- | | |
|--|---|
| <p>* Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554</p> <p>* Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20054</p> <p>* Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554</p> <p>* Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20054</p> <p>* Michelle Farquhar, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554</p> <p>* Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554</p> | <p>* Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554</p> <p>* Karen Gulick, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554</p> <p>* David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554</p> <p>* Sandra Danner, Chief
Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7130-H
Washington, D.C. 20554</p> |
|--|---|


Linda J. Evans

*Via Hand Delivery